

REMARKS

Claims 3-13, 25, 26, 30 and 51-62 were pending. Claims 1-3, 14-24, 27-51, and 52-62 have been cancelled. Claim 51 has been withdrawn. Claims 4-13 and 63 have been amended. No new claims have been added. No new matter has been added by virtue of the amendments, support being found throughout the specification and the claims as originally filed. Support for the amendment to claim 63 can be found in the specification as filed, for example at page 3, line 21.

Any cancellation of the claims was done solely to expedite the prosecution of the application. Applicant reserves the right to pursue the claims as originally filed in this or a separate application(s).

Information Disclosure Statement

The Examiner has indicated that the Information Disclosure Statements filed 9-2011 and 10-21-2011 have been considered.

Allowed claims

The Examiner has indicated that claims 25, 26, 64 and 65 are allowed.

Claim Rejections- 35 U.S.C. §112

The Examiner has rejected claims 4-13, 52-60 and 63 under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. Applicants respectfully disagree.

The Examiner argues that “[t]he claim language of claim 25 and 51 is closed. The claim language of claims 4-13 as dependent thereon recite comprising so the metes and bounds of the claim cannot be ascertained.” (Office Action, page 3).

Applicants have amended claims 4-13 to replace the “comprising” language with “consisting of.” Applicants submit that the metes and bounds of claims 4-13 are clear.

The Examiner argues that “claim 60 is confusing since the preamble of claim 51 recites ‘suitable for performing an assay for analysis of one or more Staphylococcal species other than S.aureus in a sample.’” (Office Action, page 3). Without acquiescing to any validity of the Examiner’s rejection, and solely in the interest of advancing prosecution and allowance of the claims, Applicants have cancelled claim 60.

The Examiner argues that “[a]s to claim 52-59, the claims recite method steps or use a single claim which claims both an apparatus and the method steps of using the apparatus is indefinite.” (Office Action, page 3). Without acquiescing to any validity of the Examiner’s rejection, and solely in the interest of advancing prosecution and allowance of the claims, Applicants have cancelled claims 52-59.

The Examiner argues that “[a]s to claim 63, the claim references a PNA probe that is 15 or 16 nucleotides in length...the reference to nucleotides in a PNA probe is confusing and internally inconsistent with the routine use of the term in the specification and the art.” (Office Action, page 3).

Applicants have amended claim 63 to replace the term “nucleotides” with “nucleobases.”

In view of the foregoing amendments, Applicants submit that the rejection of claims 4-13, 52-60 and 63 under 35 U.S.C. §112, second paragraph, should be withdrawn.

The Examiner has rejected claims 4-13 and 52-56 under 35 U.S.C. §112, fourth paragraph, as allegedly being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicants respectfully disagree.

The Examiner argues that “[a]s to claims 4-13, the claims fail to further limit the structure of the probe set of claim 25.” (Office Action, page 4).

Applicants have amended claims 4-13 to replace the “comprising” language with “consisting of.” Accordingly, claims 4-13 are in proper dependent form and the foregoing rejection should be withdrawn.

The Examiner argues that “[a]s to claims 52-56 as depending from claim 51 recite method steps or goals. These method steps/ goals do not further limit the structure of the kit. As such, these claims are not further limiting.” (Office Action, page 4).

Without acquiescing to any validity of the Examiner’s rejection, and solely in the interest of advancing prosecution and allowance of the claims, Applicants have cancelled claims 52-56.

In view of the foregoing amendments, Applicants submit that the rejection of claims 4-13 and 52-56 under 35 U.S.C. §112, fourth paragraph, should be withdrawn.

CONCLUSION

In view of the foregoing, entry of the amendments and remarks presented, favorable reconsideration and withdrawal of the rejections, and allowance of this application with the pending claims are respectfully requested. If a telephone conversation with the Applicants' attorney would expedite prosecution of the above-identified application, the Examiner is invited to call the undersigned at (617) 449-6509.

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Respectfully submitted,

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